

Transcript of the Testimony of
Arthur Young, Jr.

Date: November 9, 2022

Case: Joe DaSilva, Jr. v. Christine Wormuth

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1 Q. And this memorandum is dated after the investigative
2 report, obviously, because it references the investigative
3 report, right?

4 A. Yes.

5 Q. So the finding of the Garrison commander was that there
6 was sexual harassment, correct?

7 MR. ANCHILL: Objection, foundation.

8 THE WITNESS: I cannot speak to the specific Garrison
9 manager's -- what I have in front of me is his memorandum
10 for me and telling me to consider action against
11 Mr. Potter and to use the documents provided and to do
12 that in coordination with the Law Department and the
13 Management Employee Relations to determine --

14 Q. (By Mr. Altman) Mr. Young, that wasn't my question. I'm
15 sorry. I didn't mean to cut you off, but sometimes
16 it -- I asked you, clearly, the Garrison commander found
17 that there was sexual harassment, right?

18 MR. ANCHILL: Objection, foundation.

19 THE WITNESS: I have the memorandum in front of me of
20 what that states.

21 Q. (By Mr. Altman) Okay. And it states that the allegations
22 of sexual harassment were founded, correct?

23 A. Specifically what he says, "I have determined that the
24 allegation was founded."

25 Q. Okay. So the Garrison commander concluded that there was

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1 Q. So it was pretty clear that Mr. Moscone stated -- since he
2 states that the subject is about sexual harassment, he
3 references the complaint was about sexual harassment, that
4 he found that -- he determined that the allegations were
5 founded, that he determined that the allegations of sexual
6 harassment were founded, right?

7 MR. ANCHILL: Objection, asked and answered.
8 Foundation.

9 Q. (By Mr. Altman) You can answer.

10 A. Please restate the question.

11 Q. Never mind. I think we got it. He said, "Consider
12 disciplinary action against Mr. Martin Potter." Did I
13 read that correct?

14 A. Yes.

15 Q. What were the possible options for disciplinary action
16 against Mr. Potter?

17 A. That was for me to work with the MER, who was our advisor
18 on how to apply the entire disciplinary process. There's
19 a rubric called progressive discipline. So there's a
20 series of factors that are taken into account to determine
21 everything from informal verbal counseling all the way up
22 through separation.

23 Q. Mr. Young, what was the question that I asked you?

24 A. What was the disciplinary action possible against
25 Mr. Martin Potter.

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1 Q. Right. What were the options? I didn't ask -- I'm not
2 asking how do you come to them, I'm asking what were the
3 options. You said separation was one. I think you said
4 reprimand was another. What were the other options?

5 A. What I stated was anything from informal verbal counseling
6 up through separation.

7 Q. Okay. So what are the steps in between?

8 A. You start with informal verbal. You can go to informal
9 written warning. You can go to a formal written warning.
10 You can go to reprimand. You can go to a suspension. You
11 can go to proposing a separation.

12 Q. Now, this was not the first time that Mr. Potter had been
13 involved in a complaint of harassment by Mr. DaSilva, was
14 it?

15 A. I don't remember.

16 Q. That would have been an important factor, though, if it
17 had happened before, right?

18 A. Yes.

19 Q. And are you aware that there had been previous allegations
20 and that Mr. Potter and Mr. DaSilva engaged in a consent
21 agreement on that the harassment would cease? Were you
22 aware of that at this time?

23 MR. ANCHILL: Objection, form.

24 THE WITNESS: I worked with my Management Employee
25 Relations. We reviewed the entire record.

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1 Q. (By Mr. Altman) But did you see if there were any
2 previous allegations or complaints by Mr. DaSilva against
3 Chief Potter?

4 A. I don't remember.

5 Q. If there had been previous complaints which were -- there
6 was a consent agreement that they would stop, that would
7 be an important factor in deciding any disciplinary
8 actions to take, correct?

9 A. Yes.

10 Q. What was the disciplinary action that was taken against
11 Mr. Potter? It was Mr. Potter at the time. It's
12 Chief Potter now. I didn't mean to be disrespectful. He
13 earned the title. He deserves it.

14 A. Upon consultation with Management Employee Relations, I
15 issued him a written letter of counseling.

16 Q. Now, if there had been previous incidents in which there
17 were allegations and which Mr. Potter, Chief Potter had
18 agreed to various conditions including the fact he would
19 not engage in such conduct, wouldn't it have been
20 appropriate to have a more severe sanction for the second
21 incident?

22 MR. ANCHILL: Objection to form.

23 THE WITNESS: Management Employee Relations provides
24 me advice and counsel on what is appropriate, what is
25 applicable and what factors to consider.

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1 Q. (By Mr. Altman) Well, was the fact that he agreed to not
2 engage in such conduct considered when you were evaluating
3 what to do with Chief Potter?

4 MR. ANCHILL: Objection, form.

5 THE WITNESS: I can't speak to everything that
6 Mr. Hervey (ph), the Management Employee Relations
7 specialist who reviewed the entire package and provided me
8 advice on how to proceed.

9 Q. (By Mr. Altman) Well, during the advice and discussions,
10 did you discuss the fact that this had happened before?

11 A. I don't remember specific.

12 Q. Do you think you would remember if you had had that
13 discussion?

14 A. Not specifically, no.

15 Q. The written warning is pretty much just about the lowest
16 level of the discipline that you could apply, correct?

17 A. Yes.

18 Q. And as you sit here now as the person who was ultimately
19 responsible, do you think it was appropriate to apply the
20 lowest level of discipline if you knew that it happened
21 before, Chief Potter had specifically agreed not to engage
22 in such conduct in the future?

23 MR. ANCHILL: Objection to form.

24 THE WITNESS: In discussion with Management Employee
25 Relations and my review, yes, I do feel it was appropriate

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1 and it seemed to have been successful.

2 Q. (By Mr. Altman) So just to be clear, as you sit here
3 right now, you think the sanction was appropriate in light
4 of the fact that he had done it before and had agreed not
5 to do it in the future?

6 MR. ANCHILL: Objection, form.

7 THE WITNESS: I believe the action taken was
8 appropriate, specific to the situation, yes.

9 Q. (By Mr. Altman) Are you saying that if you would make
10 this decision again knowing that Chief Potter had engaged
11 in such conduct before this and had specifically agreed
12 not to engage in such conduct and had done it again
13 anyway, that a written warning letter was sufficient
14 discipline?

15 MR. KONCIUS: Objection, foundation.

16 THE WITNESS: I believe the action taken was
17 sufficient for this complaint, yes.

18 Q. (By Mr. Altman) I didn't ask you about what was done.
19 I'm asking you today if you were presented with the fact
20 that Chief Potter had done this before and as part of the
21 resolution had specifically agreed not to engage in
22 harassing conduct and then he went and did it again, if
23 you were asked to make that decision today, do you think
24 that just simply sending a warning letter was sufficient
25 disciplinary action against Chief Potter?

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1 Q. So as you sit here right now, is it your opinion as the
2 person who was asked to decide this that two incidents of
3 harassment was not sufficient to equate to a letter of
4 reprimand?

5 MR. ANCHILL: Objection, form.

6 THE WITNESS: I worked with my Management Employee
7 Relations specialist to determine what was. Part of my
8 job was to work with that advisor and discuss what it is.
9 There is on the record the fact that I had initial email
10 with Mr. Hervey saying -- basically proposing a letter of
11 reprimand. That was prior to Mr. Hervey and the legal
12 department then considering all the other factors and
13 Mr. Hervey coming back and advising me that in this
14 instance with these facts that a written letter warning
15 was appropriate and sufficient.

16 Q. (By Mr. Altman) Before today, were you aware that
17 Chief Potter had engaged in such conduct in the past and
18 had agreed as part of a resolution to not engage in such
19 conduct in the future? Were you aware of that?

20 MR. ANCHILL: Objection, form.

21 MR. KONCIUS: Foundation.

22 MR. ANCHILL: Foundation.

23 Q. (By Mr. Altman) You can answer.

24 A. I don't remember the specifics.

25 Q. That is not what I asked you. I asked you were you aware

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1 sitting on that panel and I had no personal reservations
2 about that because of my feeling that Chief Potter would
3 conduct himself professionally.

4 Q. Had any other firefighters brought sexual harassment
5 complaints against Chief Potter that you are aware of?

6 MR. ANCHILL: Objection --

7 THE WITNESS: I am not aware of any.

8 Q. (By Mr. Altman) So how did you determine that
9 Chief Potter's performance on this particular board would
10 not be influenced by the fact that Mr. DaSilva had raised
11 sexual harassment complaints against him?

12 A. Assistant Chief Potter had accepted responsibility for his
13 inappropriate comment. Assistant Chief Potter had taken
14 along with the other chiefs additional training and
15 mentoring and counseling and a period of time had elapsed,
16 so upon review it was determined and I agreed that
17 Assistant Chief Potter would continue to sit on the panel.

18 Q. I understand, but we are not talking about his general
19 appearance on the panel. We are talking about his
20 appearance on a particular panel with the particular
21 person who filed complaints against him. You didn't have
22 any concerns that Chief Potter's participation in that
23 particular panel for Mr. DaSilva could be influenced by
24 Mr. DaSilva's complaints?

25 MR. ANCHILL: Objection, asked and answered.

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1 THE WITNESS: No, I did not have concerns about that
2 because of my confidence in Assistant Chief Potter.

3 Q. (By Mr. Altman) Well, you would've thought that when
4 Assistant Chief Potter when a first complaint had been
5 brought against him and he agreed not to engage in that
6 conduct in the future and that he wouldn't have, yet he
7 did, right?

8 MR. KONCIUS: Objection, foundation.

9 Sorry, Ben. Go ahead.

10 MR. ANCHILL: Same objection.

11 THE WITNESS: Assistant Chief Potter had accepted
12 responsibility. We had done the appropriate actions to
13 correct his behavior and to ensure no future problems
14 would occur and I had confidence that that was sufficient.

15 Q. (By Mr. Altman) So you didn't think that maybe there
16 might be a conflict of interest between Chief Potter
17 serving on Mr. DaSilva's promotion board?

18 A. No, I did not consider it a conflict of interest.

19 Q. And you said you took actions to ensure that Chief Potter
20 wouldn't do it again? What were those actions?

21 A. And as part of the resolution of the inappropriate
22 comment, we conducted additional EEO training for all
23 members of the department. We had specific sensitivity
24 training conducted. So we had a series of trainings.

25 I also had counseling with the Fire Chief who was a

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1 direct report to me who was the supervisor of
2 Assistant Chief Potter for him to mentor and counsel
3 Assistant Chief Potter. So I -- I also took -- I asked
4 the chief what his assessment was because, of course, he
5 is there much closer on a daily basis than I am. So there
6 were a series of things done that led to my conclusion
7 that it was appropriate for Assistant Chief Potter to
8 continue to sit on the promotion panel.

9 Q. You keep talking about sit on the promotion panel
10 generally and I am talking about a specific promotion
11 panel. Let me ask it this way, has any member of the
12 promotion panel ever not participated in a particular
13 person's promotion review because of one reason or
14 another?

15 MR. ANCHILL: Objection, form, foundation.

16 THE WITNESS: I don't have that information. The
17 Fire Chief puts the panel together.

18 Q. (By Mr. Altman) I understand. So you're saying there was
19 a specific review with respect to Chief Potter serving on
20 Mr. DaSilva's promotion panel as to whether that was
21 appropriate?

22 A. Yes.

23 Q. And who was part of that review?

24 A. Mr. Moscone basically charged me. I discussed it with the
25 then chief of our EEO office, Ms. Kleehammer, and I

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1 Mr. DaSilva's supervisor.

2 Q. And with that assistant chief have been on the promotion
3 panel?

4 A. Yes.

5 Q. And do you know who that assistant chief was at the time
6 of the promotion panel?

7 A. No, I do not have that in front of me.

8 Q. And would it be routine to have multiple assistant chiefs
9 on the promotion panel?

10 A. Yes.

11 Q. What made you decide that a letter of reprimand to
12 Chief Potter was sufficient for a sanction when you raised
13 that to the other people who you are consulting with?

14 A. Upon my review of the investigative report, that is what
15 I -- in opening my discussion with Management Employee
16 Relations with Mr. Hervey, I basically proposed a letter
17 of reprimand as being an appropriate level of discipline
18 to consider.

19 Q. And I'm asking how did you come to that?

20 A. Based on the investigative report results.

21 Q. And you don't know whether you considered the fact that it
22 had happened again when you made that recommendation,
23 right?

24 MR. ANCHILL: Objection, asked and -- withdrawn.
25 Go ahead.

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1 filed an EEO complaint?

2 MR. ANCHILL: Objection, form.

3 THE WITNESS: I am a proponent of trying to resolve
4 things at the lowest level possible because it never
5 closes out the options to continue to progress through the
6 system. So I am a proponent of starting at the lowest
7 level possible to see what resolution is possible and
8 that's -- I would say that's always the recommended
9 procedure.

10 Q. (By Mr. Altman) Now, your relationship with Mr. DaSilva
11 changed after he filed this complaint, didn't it?

12 MR. ANCHILL: Objection, form.

13 THE WITNESS: My relationship with Mr. DaSilva had
14 changed prior to this complaint.

15 Q. (By Mr. Altman) Do you know why it changed?

16 A. Yes. A few years ago it had come to me that Mr. DaSilva
17 although he was using the open-door sessions and
18 mentor-mentee, it was brought to my attention that he was
19 using my name and position in the fire station kind of as
20 an attempted shield for him with his peers, telling them
21 that he had a direct line with the director, which he, of
22 course, does have a direct line with me, but it was
23 inappropriate the way it came to me that he was portraying
24 our relationship.

25 Q. Did you ever talk to Mr. DaSilva about that?

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1 A. Yes. I specifically told Mr. DaSilva that if that had
2 occurred that it was an inappropriate characterization of
3 the relationship. I spoke about that open-door policy is
4 for all employees and the fact that he was -- had asked me
5 to be kind of a mentor to him did not establish any kind
6 of protected relationship for him.

7 We had had those conversations many times because
8 Mr. DaSilva did have -- he liked to bring things to my
9 attention that he thought I needed to know from his level
10 that he felt I might not hear from other levels and so we
11 had had discussions about the difference between
12 professional career mentorship and a subordinate bringing
13 complaints and the fact that I could not -- that there was
14 no confidential informant nature if he expected me to take
15 some action about something. We've had that discussion on
16 more than one occasion.

17 Q. So the change in your relation had nothing to do with his
18 complaints about Chief Potter?

19 A. No.

20 Q. Were you angry with Mr. DaSilva that he had filed a
21 specific EEO complaint about Chief Potter?

22 A. No.

23 Q. Going back to Exhibit 21, in point number two where it
24 said -- it was talking about the actions to be taken, do
25 you see that portion?

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1 and answered.

2 THE WITNESS: I used the resources available to me to
3 determine what was the appropriate action to take.

4 Q. (By Mr. Altman) That wasn't my question, Mr. Young. You
5 just testified that his sanction was not enhanced because
6 of previous conduct and I'm asking you why it wasn't
7 enhanced because of previous conduct.

8 MR. ANCHILL: Objection, form, asked and answered
9 several times.

10 THE WITNESS: Upon advice from the Management
11 Employee Relations, we determined what was the appropriate
12 action to take in this specific situation and Management
13 Employee Relations does have the complete record in front
14 of them when they are making the advice to the management
15 official.

16 Q. (By Mr. Altman) And you agree that his sanction could not
17 have been enhanced because of his previous conduct,
18 correct?

19 MR. KONCIUS: Objection, foundation.

20 MR. ANCHILL: Objection, form, asked and answered.

21 THE WITNESS: I believe that the appropriate action
22 was taken.

23 MR. ALTMAN: I have no other questions. Thank you,
24 Mr. Young.

25 THE WITNESS: Thank you.

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1 MR. ANCHILL: Can we take a couple minutes, if we
2 could. I may have a question or two.

3 MR. ALTMAN: Absolutely. Of course.

4 (Brief recess.)

5 CROSS-EXAMINATION

6 BY MR. ANCHILL:

7 Q. Did anything prevent Mr. DaSilva from working overtime
8 while the sexual harassment complaint was pending?

9 A. No.

10 Q. Why not?

11 A. The interpretation of the no contact order, we
12 specifically asked the Garrison manager what his intent
13 was. He provided a response. The no contact order was
14 the intent to prevent other than business communication
15 that the understanding was that if they were working
16 together, if they were on the same shift, that
17 Assistant Chief Potter would not engage in any unnecessary
18 communication with Mr. DaSilva, nor would Mr. DaSilva
19 engage in any unnecessary communication with
20 Assistant Chief Potter, that it would be related to
21 business.

22 Q. You testified earlier that the letter of counseling that
23 was given to Mr. Potter appeared to be successful. Do you
24 remember that testimony?

25 A. Yes.

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1 Q. Can you tell us what you meant by that?

2 A. The intent of discipline is always to correct the behavior
3 and deter that behavior from occurring again in the future
4 and it's to -- one of the things we look at, does the
5 person that is taking discipline or counseling, do they
6 accept responsibility for what they did. Do they
7 understand why some action is being taken, why they are
8 being counseled. And the idea is that you then look at
9 what happens as you move forward and is there any
10 indication that that was not successful.

11 So I truly felt that Assistant Chief Potter accepted
12 responsibility for the inappropriate comment and the fact
13 that he had basically -- that such inappropriate
14 communication would not occur in the future.

15 The letter of counseling was very specific in the
16 fact that if it was to occur, that more stringent
17 discipline measures could occur. So I felt it was
18 successful and ultimately that I will say contributed to
19 my decision that Assistant Chief Potter was a viable and
20 qualified candidate to become chief because his
21 performance and his communication and everything was very
22 professional. So I felt that we had closed that matter
23 with issuing this letter of warning, this letter of
24 counseling to him.

25 MR. ANCHILL: Thank you. I have no further

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1 questi ons.

2 MR. KONCI US: I have no questi ons. Thank you for
3 your time.

4 MR. ALTMAN: I do have some questi ons.

5 REDI RECT EXAMI NATION

6 BY MR. ALTMAN:

7 Q. So you said nothing stopped Mr. DaSilva from working
8 overtime because of the no contact order, right? But
9 Chief Potter had already demonstrated he wasn't going to
10 follow agreements because he had already agreed to not
11 engage in such conduct and he did it again anyway, right?

12 MR. KONCI US: Obje cti on, foundati on.

13 MR. ANCHI LL: Obje cti on, assumes facts, form.

14 Q. (By Mr. Altman) You can answer.

15 A. As I stated, I felt Mr. Potter had accepted responsibility
16 and he had indicated an understanding of his situation and
17 that he had agreed not to do such things in the future.

18 Q. But he already -- I'm sorry. I didn't mean to interrupt
19 you.

20 A. I was just going to state I was confident that we had
21 reached resolution.

22 Q. Why didn't it cause you any concern that Chief Potter had
23 agreed previously and to not engage in such conduct and he
24 went and he did it anyway?

25 MR. KONCI US: Obje cti on, foundati on.

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CERTIFICATE OF NOTARY - COURT RECORDER

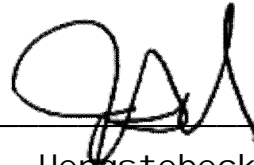
STATE OF MICHIGAN)

)

COUNTY OF OAKLAND)

I, James A. Hengstebeck, a Notary Public in and for the above county and state, do hereby certify that witness ARTHUR J. YOUNG, JR. remotely appeared before me at the time hereinbefore set forth; that the witness was by me first duly sworn to testify to the truth, the whole truth and nothing but the truth; that thereupon the foregoing questions were asked and foregoing answers made by the witness which were duly recorded by me; that it was later reduced to written form under my direction and supervision, and that this is, to the best of my knowledge and belief, a true and correct transcript.

I further certify that I am neither of counsel to either party nor interested in the outcome of this case.



James A. Hengstebeck, CER 4623,
Notary Public, Oakland County,
Michigan

My Commission Expires: 10-30-2028

